D.B. CIVIL SPECIAL APPEAL (W) NO. 612/2003

Smt. Kulsum
vs.
State of Rajasthan and Ors.

Date of Order :: 16-11-2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. JP Joshi, for the appellant.

This special appeal arises out of S.B. Civil Writ Petition No. 437/1992. The appellant has purchased the land by way of registered sale deed from the respondent No.5 Shri Bhania @ Shri Salim Mohd. after he converted to Islam. The sale deed was executed in favour of the appellant-petitioner on 19.6.1975 after about lapse of 9 years. The Sub-Divisional Officer, Banswara issued a notice to show cause for resuming the land in question inter alia on the ground that the transfer through which the petitioner-appellant has acquired title in contravention of Section 42 of the Rajasthan Tenancy Act and therefore, void. The consequence thereof is that it resumed in the State.

The petitioner's contention was that incept of membership of Schedule Cast and Schedule Tribe is running Islam and therefore, Section 42 is not applicable for that purpose to a transaction

conducted by Musalim. It may be noticed here that the respondent No.5 was natural born member of Schedule Cast that has converted himself into Islam later on. The contention of the appellant had failed before the Revenue Authority as well as learned Single Judge when the writ petition was filed challenging the orders of the Revenue Authority. The order of resumption of land is covered under the aforesaid sale deed. It is not brought to our notice that the Division Bench of this Court in D.B. Civil Writ Petition No. 1861/1980 (Brij Lal and Anr. Vs. Board of Revenue, Ajmer and Ors.) decided on 9.3.1990 has upheld the contention in relation to such transaction after the transferee has converted himself into questionity which judgment according to the learned counsel for the appellant has become final as SLP against the same has been dismissed.

It has further been brought to our notice that in the like appeal in between the same parties in respect of another parcel of land arising out of another writ petition having been raised, has since been allowed following the judgment of this Court reported in 1999(3) RLW 1685 (Gurnam Singh Vs. State of Rajasthan) and on 29.10.2007 relying the Brij Lal's case. We are in agreement with the ration taken in Gurnam's case as followed in D.B. Civil Special Appeal (W) No.339/2003.

Accordingly, the appeal is allowed. The order of the learned Single Judge so also revenue authority holding contrary are set-aside. There shall be no order as to costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/